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January 20, 2021

Hon. Jesse M. Furman
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007

**Application GRANTED. The Clerk of
Court is directed to terminate Doc. #343.
SO ORDERED.**



Filed on ECF

United States v. Devonte Brown
20 Cr. 135 (JMF)

January 20, 2021

Dear Judge Furman:

We represent the defendant pursuant to the Criminal Justice Act. We write to respectfully request that the Court postpone Mr. Brown's surrender date, currently scheduled for February 1, 2021. By way of brief background, on April 30, 2020, Your Honor granted in part the Government's motion to revoke Mr. Brown's bail conditions, but also made the finding that there was a "compelling reason" justifying Mr. Brown's temporary release in light of the current conditions in prison as a result of the COVID-19 pandemic. The Court directed Mr. Brown to surrender on June 29, 2020 "unless the Court [found] prior to that date – pursuant to a letter motion filed by Defendant – that 'compelling' reasons still exist to extend the Defendant's release." (Dkt. No. 118.) Your Honor has granted applications to extend Mr. Brown's release on this basis three times: first through September 1, 2020; then through November 2, 2020 and most recently through February 1, 2020. In denying the Government's motion for reconsideration of the Court's order granting the first extension, the Court noted:

Although conditions in New York City have undoubtedly improved dramatically, the Court needs more confidence that the crisis has passed with respect to jails and prisons before it concludes that compelling reasons no longer exist to maintain Defendant's temporary release.

(Dkt. No. 153.)

The Court's reasoning for previously postponing Mr. Brown's surrender date remains true. In fact, since the Court's prior rulings, conditions have gotten worse, not better. Over the past week, there has been an average of 207,495 cases of COVID-19 reported daily across the United States. (*Covid in the U.S.: Latest Map and Case Count*, Jan. 19, 2021, THE NEW YORK TIMES, found at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.) According to the New York Times, as of earlier this week more than 510,000 incarcerated persons have been infected and at least 2,200 inmates and correctional officers have died in the United States. (*See id.*) The number of infected incarcerated persons has more than doubled in the last two months alone.

Given the poor living conditions and lack of social distancing in prison facilities, the number of infections among people incarcerated remains disproportionately high. In a pair of letters written to U.S. Attorney General William P. Barr and Federal Bureau of Prisons Director Michael Carvajal, Senators Elizabeth Warren and Richard Durbin point out how severely the government's response to coronavirus outbreaks in federal prison facilities in particular has failed. (*See Warren, Durbin Slam Government's 'Failing' Efforts to Contain Coronavirus in Federal Prisons*, Oct. 5, 2020, THE WASHINGTON POST, found at <https://www.washingtonpost.com/politics/2020/10/05/warren-durbin-bop-letter/>) ("The combination of overcrowding, chronic staffing shortages and aging facilities makes prison facilities particularly ill-equipped to adapt to social distancing, ventilation, sanitation and other health guidelines that the Centers for Disease Control and Prevention has issued to mitigate the spread of the coronavirus"). Despite its efforts to contain the virus, both the MCC and MDC continue to report significant increases in positive tests. As of January 19, 2021, the MCC reported 84 positive tests among detainees and 58 positives among staff (a total of 9 new positives in less than two weeks), and the MDC reported 229 positive tests among detainees and 92 positive tests among staff (a total of 81 new positives in less than two weeks). (*See* Jan. 7, 2021 and Jan. 19, 2021 Letters to the Honorable Roslynn R. Mauskopf from MCC Warden M. Licon-Vitale and MDC Warden H. Tellez, found at https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20210107.pdf and https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20210119.pdf.)

For these reasons, we respectfully request that Your Honor postpone Mr. Brown's surrender date for an additional three months, through Monday May 3, 2021. We submit that such date is reasonable under the current circumstances. We have been in touch with Mr. Brown's pretrial services officer and he advises that Mr. Brown has been compliant with the terms of his home incarceration, and that pretrial services takes no position with respect to this application. We have consulted with the Government and they have asked us to include the following statement: "The Government continues to oppose the defendant's delayed surrender for the reasons previously entered on the record. Additionally, the Government notes that the distribution of the COVID-19 vaccine has begun in the United States and the BOP, although it is unclear when the defendant will be eligible to receive the vaccine."

Respectfully submitted,

Sarah M. Sacks